

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**

DAN DOLAN, a citizen of the State of
New Mexico, **THE NEW MEXICANS
FOR AN ECONOMIC RECOVERY
PAC** a candidate support or opposition
committee and independent expenditures
committee, and **THE BERNALILLO
COUNTY REPUBLICAN PARTY**,

Plaintiffs,

vs.

Case No. 1:12-cv-00110-CA-ACT

DIANE J. DURAN, in her official capacity
as New Mexico Secretary of State.

**Plaintiffs' Emergency Motion for the Court to Reconsider its Decision to Deny
Plaintiffs and Defendant Intervenor Al Park's Request for an Emergency
Temporary Restraining Order**

Plaintiffs hereby respectfully move this Court to reconsider its May 25, 2012,
decision to deny Plaintiffs and Defendant Intervenor Al Park's request for an Emergency
Temporary Restraining Order ("TRO") and state as follows in support thereof:

1. The attached affidavit by New Mexico Secretary of State Bureau of
Elections Director Bobbi Shearer succinctly articulates the urgency and grounds for the
instant motion for reconsideration. *See* affidavit of Bobbi Shearer attached as Exhibit #
1.
2. Plaintiffs filed their Emergency Motion for a Temporary Restraining Order
on May 24, 2012. After four reassignments, the matter was assigned to this Court and a
hearing was held on the request that commenced at 7:45 p.m. on May 25, 2012.

3. After approximately 90 minutes of arguments and proffers of proof by the parties, the Court declined to issue a TRO.

4. A transcript of the hearing is not yet available, but the recollection of the undersigned counsel was that a dispositive factor in Court's rational for denying the TRO was that all available evidence indicated that the SOS and AGO's concurred with the contention that the matching funds provision of the VAA was unconstitutional and that distribution of any unconstitutional matching funds was unlikely, and thus, Plaintiffs and Intervenor Defendant Al Park were not likely to suffer any irreparable harm as a result of the Court not issuing a TRO.

5. Despite being served with the Complaint and the Emergency Motion for a TRO and the text of Plaintiffs' proposed order, the AGO's did not file a response in opposition and, to date, has not answered the Complaint to defend the constitutionality of the law.

6. Instead of responding or otherwise participating in this litigation to defend the constitutionality of the law at issue, the Plaintiffs subsequently learned that, at 4:02 p.m. on May 25, the AGO's office directed the Secretary of State to implement the matching fund provisions of the Voter Action Act ("VAA") on May 29th 2012, at 9 a.m., a law the AGO's had previously provided testimony that it believed to be unconstitutional.

7. Upon information and belief, this critical piece of information was communicated to the publically financed candidates, who had requested matching funds, prior to the May 25, 2012 hearing held on this matter and was not disclosed to the Court.

8. Absent an Order of this Court directing otherwise, at the direction of the AGO, the SOS intends to issue unconstitutional matching fund checks at 9 a.m. on Tuesday May 29, 2012. *Id.*

9. As more fully set out in its *Complaint and Emergency Motion for a Temporary Restraining Order* the matching funds provisions the VAA, Sections 1-19A-1 TO 1-19A-17 NMSA 1978 violate Plaintiffs' rights under the First and Fourteenth Amendments of the United States Constitution. Specifically, the provisions that apply to the offices of the judicial branch of government subject to statewide election, and the Office of Public Regulation Commissioner.

10. Plaintiffs have established probability of success on the merits, that it will be immediately and irreparably harmed, that a TRO will not substantially harm Defendant or the Defendant Intervenors, that a TRO is in the public interest, and that there is no adequate remedy at law.

11. In light of the assertions contained in the affidavit of Bobbi Shearer attached as Exhibit # 1 to this Motion, Plaintiffs' assume the concurrence of the Defendant Secretary of State Diane Duran. Because of the urgent time sensitive nature of this motion the position of the other intervenors, the AGO, and the other real parties in interest was not sought.

WHEREFORE, Plaintiffs respectfully request this Court reconsider its earlier decision and grant Plaintiffs and Intervenor Al Park's request for a TRO enjoining Defendant Secretary of State Diane Duran from enforcing the matching funds provisions the New Mexico Voter Action Act.

Respectfully submitted,

THE BARNETT LAW FIRM, P.A.

By: /s/ Colin Hunter

COLIN L. HUNTER

1905 Wyoming Blvd. NE
Albuquerque, New Mexico 87112
Tele: (505) 275-3200
Fax: (505) 275-3837
Email: colin@theblf.com

I HERBY CERTIFY that on the 29 day of May, 2012, a true and correct copy of the foregoing was served upon:

Scott Fuqua
Office of the Attorney General
408 Galisteo St
Santa Fe, New Mexico 87501
sfuqua@nmag.gov
Attorney for Defendant Secretary of State Dianw Duran

Albert L. Hutchinson, Jr.
P.O. Box 25304 Albuquerque, NM 87125 (505) 750-8005
(505) 212-0249 facsimile
al@aequitas.pro
Attorney for Proposed Intervenor Victor Valdez

Real Parties Interest

Candidates Statewide Judicial Offices

J. Miles Hanisee
201 12th Street NW
Albuquerque, NM 87102-1815
(505) 243-1100
505.244.0888
jmhlaw@mac.com

PO Box 20784
Albuquerque, NM 87104

505.362.7544

Gina505maestas@gmail.com

Victor S. Lopez

Workers Comp

2410 Centre Ave SE

Albuquerque, NM 87107

505.841.6020

505.841-6873

505-268-6628

judgevictorslopez@gmail.com

622Graceland Drive SE

Albuquerque, NM 87104

505-977.2140

Victorlopez@aol.com

Monica Zamora

Children's Court

5100 2nd Street NW

Albuquerque, NM 87107

505.841.7392

Fax: 505.841.5915

PO Box 14451

Albuquerque, NM 87191

505.903.0938

judgemoniczamora@gmail.com

Candidates of the Office of Public Regulation Commissioner

PRC – Albuquerque Seat

Al Park

PO Box 26165

Albuquerque, NM 87125

505.235.1408

Alpark.nm@gmail.com

PO Box 26165

Albuquerque, NM

505.235.1408

Alpark.nm@gmail.com

Cynthia B. Hall

511 Solar Road NW
Albuquerque, NM
505.720.8627
cynthiabhall@gmail.com

Karen Louise Montoya

501 Tijeras
Albuquerque, NM 87102-87125
(PO BOX 27108)
505.222.3700
505.222.3770
kmontoya@bernco.gov

1504 Clancy NE
Albuquerque, NM
505.559.0482
Karen.l.montoya@gmail.com

Chris Ocksrider

118 Wellesley Drive SE
Albuquerque, NM 87106-1444
505.266.0800
505.266.2755
ocksriderlaw@aol.com

PO Box 95588
Albuquerque, NM
505.489.4477
chris@ocksriderforprc.com

PRC – Northern Seat

Danny Maki

1539 Escondida Court
Santa Fe, NM
505.690.0988
dmaki@dannymaki.com

Valerie L. Espinoza

2927 Plaza Azul

Santa Fe, NM
505.470.8223
voteval@q.com

Virginia Vigil
PO Box 4502
Santa Fe, NM 87502-4502
505.995.2755
505.995.2740
mvvigil@msn.com

Brad A. Gallegos
1301 S Saint Francis Dr Ste A
Santa Fe, NM 87505

4313 Vuelta Dorado
Santa Fe, NM
505.660.6235
bradgallegosprc@gmail.com

via electronic mail at the web addresses indicated above.

/s/ Colin Hunter

COLIN L. HUNTER